SENATE SELECT COMMITTEE ON THE APPROPRIATIONS PROCESS

REPORT TO THE 1985 SENATE OF NORTH CAROLINA 1986 SESSION

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THIS REPORT ADOPTED DECEMBER 10, 1985

BACKGROUND AND COMMITTEE PROCEEDINGS

As a result of concern about the appropriations process of the North Carolina General Assembly, Lieutenant Governor Robert B. Jordan III on July 31, 1985 established the Select Committee on the Appropriations Process.

That committee was chaired by Senator Aaron Plyler. Other committee members were Senators Tony Rand, Marvin Ward, Bob Warren, Joe Thomas, Wilma Woodard, Harold Hardison, Kenneth Royall, Russell Walker, and David Parnell.

The Lieutenant Governor's charge to the Committee (see Appendix A), was to examine both the practice of including substantive legislation in appropriations bills, and the process of making special appropriations for local projects.

The committee met on August 29, 1985, November 6, 1985, and December 10, 1985.

At the first meeting, the Committee heard remarks from the Lieutenant Governor (see Appendix B), and heard a review from staff of the Bill Drafting and Fiscal Research Divisions. Staff was directed to prepare a report on how other states handle the process, and a legal report on the public purpose doctrine.

At the second meeting, the Committee heard a presentation from Gerry F. Cohen, Director of the Bill Drafting Division, on how the other 49 states handle the special provision and local appropriation processes. (see Appendix D) The committee also heard a report from Sabra Faires, a staff attorney in the Bill Drafting Division, concerning the public purpose doctrine. (see Appendix E) After discussing the memorandum, the Committee determined that under the Constitution, no appropriation could be made unless for a public purpose under our constitution. Jim Johnson of the Fiscal Research Division reported on the local appropriations process. The Committee directed staff to look further into the special provision process in Connecticut and New York.

At the final meeting, the committee heard the requested report, continued discussion, and adopted the recommendations found on page 2 of this report. The Connecticut and New York report appears as Appendix C.

Additional information may be obtained from Gerry F. Cohen, Committee Counsel, 100 Legislative Office Building, Raleigh, N.C. 27611, telephone (919)733-6660.

RECOMMENDATIONS

The Senate Select Committee on the Appropriations Process makes the following recommendations to the Senate:

1) Each bill appropriating money for local projects shall be considered separately on its own merits by the Appropriations Subcommittees and then by the full Appropriations Committee.

2) No local appropriation bill shall be eligible for introduction if it deals with more than one subject or object.

3) In the 1986 short session, no local appropriations bill may be filed for introduction after June 11, 1986. In the 1987 Session, the deadline for filing for introduction of agency bills, local bills, and local appropriations bills will be April 16, 1986, and the deadline for introduction of all other bills will be April 30, 1987. All House bills other than appropriations bills must receive third reading in the house no later than May 21, 1987, and received on messages in the Senate by May 25, 1987 in order to be eligible for consideration by the Senate in 1987.

4) The Current Operations Appropriations Act, the Capital Improvement Appropriations Bill, and the appropriation bill making general revisions in the second-year budget shall contain nothing but items related to appropriations.

5) The Committee endorses Senate Bill 851, 1985 Session, (see Appendix F) and recommends that its text be included in the Senate Rules.

6) No subject may be included in a local appropriations bill unless that subject was in a bill introduced in that session of the General Assembly.

7) The above recommendations shall be referred to the Senate Rules Committee with the recommendation they be incorporated in the rules of the Senate. Copies of this committee report shall be sent to all members of the Senate.

APPENDIX "A"

OFFICE OF THE LIEUTENANT GOVERNOR
STATE OF NORTH CAROLINA
RALEIGH 27611

ROBERT B. JORDAN III
LIEUTENANT GOVERNOR

July 31, 1985

The Honorable Aaron Plyler
2170 Concord Avenue
Monroe, North Carolina 28110

Dear Aaron:

As you know, I have been concerned about various aspects of the appropriations process as they have evolved over the past several sessions. Therefore, in accordance with Senate Rule 31(a), I appoint you Chairman of the Select Committee on the Appropriations Process. Other members of the committee are:

Senator Tony Rand
Senator Marvin Ward
Senator Bob Warren
Senator Joe Thomas
Senator Wilma Woodard
Senator Harold Hardison
Senator Kenneth Royall
Senator Russell Walker
Senator David Parnell

The Select Committee on the Appropriations Process is charged with the following duties:

(1) Examining the practice of including substantive legislation in appropriations bills, and recommending either legislation or an amendment to the Senate Rules to regulate, restrict, or prohibit this practice; and

(2) Examining the process of making special appropriations for local projects, and recommending either legislation or an amendment to the Senate rules that would provide for an orderly and equitable process. Such examination should include but is not limited to:

a. A minimum dollar amount for each appropriation, so as to reduce paperwork and enable the process to operate more smoothly and with adequate opportunity for scrutiny of requests for special appropriations for local projects;

b. The elimination of the omnibus appropriations bill for local projects; and

c. The elimination of special appropriations for local projects.

In accordance with Section 2 of Resolution 34, Session Laws of 1985, the Select Committee on the Appropriations Process may meet during the interim prior to reconvening of the 1985 Regular Session of the General Assembly, and may recommend matters for consideration at the 1986 Session.

Sincerely,

-3-

Bob Jordan

APPENDIX "B"

REMARKS BY LIEUTENANT GOVERNOR BOB JORDAN

TO SENATE SELECT COMMITTEE ON APPROPRIATIONS PROCESS

AUGUST 29, 1985

I WANT TO THANK ALL OF YOU FOR AGREEING TO SERVE ON THIS COMMITTEE. YOU, IN YOUR RESPONSIBILITIES AS CHAIRMEN OF BUDGET COMMITTEES HAVE HAD A FIRST HAND LOOK AT HOW THE PROCESS HAS WORKED THIS SESSION. I AM CONFIDENT OF YOUR ABILITY AND COMMITMENT TO PUBLIC SERVICE AND KNOW YOU WILL DO YOUR BEST IN THIS UNDERTAKING. BETWEEN NOW AND FEBRUARY I WANT YOU TO RE-EXAMINE THE BUDGETING PROCESS TO SEE HOW WE CAN CHANGE SOME PROCEDURES AND OPEN UP THE PROCESS MORE.

TWO AREAS I PARTICULARLY WANT YOU TO STUDY AND MAKE RECOMMENDATIONS ARE THE SPECIAL PROVISIONS AND THE FUNDS FOR LOCAL PROJECTS. I WANT YOU TO FIND OUT HOW OTHER STATES HANDLE THESE TWO PROCEDURES AND SEE HOW THEY HANDLE THE OVERALL APPROPRIATIONS PROCESS.

I AM PLEASED THE SENATE PASSED LEGISLATION TO PREVENT SPECIAL PROVISIONS IN THE BUDGET THAT DO NOT DIRECTLY RELATE TO APPROPRIATIONS. I DO NOT BELIEVE WE SHOULD BE ENACTING LAWS THROUGH SPECIAL PROVISIONS WITHOUT OPEN DEBATE ON THE PROPOSED CHANGES. YOU DID A GOOD JOB THIS YEAR IN DEALING WITH SPECIAL PROVISIONS IN THE SUBCOMMITTEES AND THEN TAKING IT TO THE FULL COMMITTEE. HOWEVER, I FIRMLY BELIEVE THAT ONLY PROVISIONS RELATING DIRECTLY TO THE BUDGET SHOULD BE INCLUDED IN THE APPROPRIATIONS BILLS. I WANT YOU TO DETERMINE HOW THIS PROCESS CAN BEST BE HANDLED IN THE FUTURE.

ON THE FUNDING OF LOCAL PROJECTS, I HAVE NO DOUBT THAT THE MONEY GOES TO MANY WORTHWHILE LOCAL PROJECTS THAT BENEFIT THE ENTIRE COMMUNITY. BUT WE NEED TO RE-EXAMINE THE PROCESS TO SEE

THAT THE PUBLIC'S INTEREST IS BEST SERVED THROUGH THE PROCESS. I WOULD SUGGEST THAT YOU HAVE STAFF DO A LEGAL ANALYSIS OF FUNDING FOR PUBLIC PURPOSE TO DETERMINE THE POLICY WE SHOULD FOLLOW. IF YOU DECIDE THAT THE GENERAL ASSEMBLY SHOULD CONTINUE TO FUND WORTHWHILE LOCAL PROJECTS, THEN DECIDE THE BEST METHOD FOR FUNDING THOSE PROJECTS. I THINK IT IS IMPORTANT THAT THE LOCAL COMMUNITIES BE INVOLVED IN THE PROCESS IF IT IS CONTINUED AND THAT BUDGET COMMITTEES GIVE THOROUGH REVIEW OF THE REQUESTS.

THIS IS A SIGNIFICANT PROCESS THAT YOU ARE UNDERTAKING. THE PEOPLE OF NORTH CAROLINA WANT TO BE ASSURED AND I WANT TO ASSURE THEM THAT WE ARE SPENDING THEIR TAX DOLLARS WISELY, SO IT IS IMPORTANT THAT THEY HAVE AS MUCH INFORMATION AS POSSIBLE AND CAN PARTICIPATE IN THE PROCESS.

I HOPE THAT YOU WILL HAVE RECOMMENDATIONS BY THE END OF THE YEAR SO WE CAN USE THEM IN PREPARING FOR THE 1986 BUDGET SESSION. AGAIN, I THANK YOU FOR UNDERTAKING THIS EFFORT, AND I LOOK FORWARD TO HEARING YOUR PROPOSALS.

APPENDIX "C"

December 3, 1985

MEMORANDUM

TO: Senate Select Committee on the Appropriations Process

FROM: Gerry F. Cohen
Director of Legislative Drafting

SUBJECT: Connecticut and New York

At the November 6, 1985 meeting of the committee, I was instructed to evaluate the experience of Connecticut and New York with the restrictions on appropriations found in those states.

In Connecticut, C.G.S. 2-35 states "Each appropriation bill shall specify the particular purpose for which appropriation is made, shall be itemized as far as practicable and may contain any legislation necessary to implement its appropriations provisions, provided no other general legislation shall be made a part of such appropriation bill."

This language appears to have worked quite well in Connecticut to keep substantive legislation out of the appropriations bill. I enclose copies of the 1984 and 1985 Connecticut general appropriations bill, which contain no substantive special provisions.

Fiscal staff in Connecticut tell me that when a substantive bill requiring an appropriation is reported by a subject matter committee, it is re-referred to the appropriations committee, as is our practice in North Carolina. If the appropriations committee decides to fund the bill as part of the main appropriations process, it will include the funds in the appropriate department, and then report the bill itself after the main appropriations bill has been enacted.

The main appropriations bill will contain a limitation on the expenditure. For instance, if the Judiciary Committee has approved Senate Bill 100 to add two five superior court judges,

and it has been re-referred to appropriations, which determines an annual cost of $300,000 and agrees to fund the expansion, that amount will be added to the Judicial Budget. A limitation will be added to the budget bill such as "Of the funds appropriated to the Administrative Office of the Courts, $300,000 shall be available only for the purposes of Senate Bill 100, 1985 Session, and if that bill is not ratified, such funds shall not be expended."

This means that if the legislature defeats the courts bill, the Judicial Department does not have $300,000 to play with. The General Assembly could reappropriate it for another purpose, or the money would revert at the end of the fiscal year. Some substantive bills are defeated on their merits in Connecticut even though the budget has funded them in this way.

If the committee decides to follow the Connecticut approach, I would suggest the following language: "The Current Operations Appropriations Act, Capital Improvement Appropriation Act, or any other act appropriating funds to more than one subject or object may contain any legislation necessary to implement its appropriations provisions, but no other general or local legislation may be included in that such appropriation bill. A bill enacting, repealing, or amending general or local law and relating to only one subject or object may contain an appropriation to carry out its purpose."

This language would be more flexible than Connecticut because it would still allow a substantive bill to carry an appropriation to carry it out, but it would still be subject to the Executive Budget Act restriction that it can not be considered until the main bill has passed.

New York's constitutional provision in Article VII, Section 6 states "No provision shall be embraced in any appropriation bill...unless it relates specifically to some particular appropriation the bill, and any such provision shall be limited in it operation to such appropriation."

In contrast to Connecticut's 40 page appropriations bill, New York's runs to about 700 pages. This is largely because New York passes a line item budget. New York's enacted budget contains the detail of our Governor's proposed budget. New York uses far more special provisions than Connecticut, but they are limited to appropriations. For instance, there may be a statutory formula for funding public schools, and if the Legislature is increasing or decreasing funding, it may change the statutory formula in the bill. I enclose some scattered pages of the 1981 New York budget to show the kind of provisions which are found in the New York budget bill. Provisions are noted by arrows in the margin. Also note at pages 406-407 some "pork barrel" funds in the main budget bill.

New York's language is a little more flexible. To meld the New York language into the Connecticut language, I would suggest something along the order of "The Current Operations Appropriations Act, Capital Improvement Appropriation Act, or any other act appropriating funds to more than one subject or object may contain any legislation necessary to implement its appropriations provisions or which relates specifically to some particular appropriation in the bill, and any such legislation shall be limited in its operation to such appropriation. No other general or local legislation may be included in that such appropriation bill. A bill enacting, repealing, or amending general or local law and relating to only one subject or object may contain an appropriation to carry out its purpose."

Please let me know if I can provide further assistance in this matter.

APPENDIX "D"

October 31, 1985

MEMORANDUM

TO: Senate Select Committee on the Appropriations Process

FROM: Gerry F. Cohen
Director of Legislative Drafting

SUBJECT: Survey of other States Concerning Appropriations Process

At the instruction of the committee, I have surveyed the other 49 states concerning substantive legislation in the appropriations process, and restrictions on omnibus local appropriations bills. I received responses from 48 states. Only Michigan failed to respond. Following the text below is a chart outlining the responses, and footnotes to most entries on the table. On the table, the first category indicates responses to a question on whether substantive provisions on the appropriations bill are forbidden. The second category deals with restrictions that are not total prohibitions. The third category relates to prohibitions of omnibus local appropriations bills.

From analyzing the responses, it appears that 31 of the 48 states prohibit substantive legislation in appropriations bills, and that in three other states, provisions are now in court or are difficult to define. Nine states, including two of the three questionable states, have restrictions less than total prohibition. Thus, a total of 41 of the 48 states have restrictions or prohibitions either contained in the constitution, statutes, or legislative rules.

In addition, a total of 16 of the 48 states appear to prohibit omnibus local appropriations acts. Five other states have provisions which restrict the use of these bills. Many of the other states indicate they do not use such acts, even though they might not be prohibited.

Omnibus bills and substantive special provisions are almost universally condemned by the courts which have interpreted provisions concerning them. For instance, the United States Court

of Appeals for the District of Columbia Circuit has noted "Congress of course has undoubted power to permanently change existing laws even in an appropriation act, and the fact that it is universally recognized as exceedingly bad legislative practice and is forbidden by the rules of both House of Congress does not subject it to judicial scrutiny." Tayloe v. Kjaer, 171 F.2d 343 (D.C. Cir. 1948).

The Arkansas Supreme Court has noted that that state's restrictions were designed to "...prevent the inclusion of separate and unrelated appropriations in a single bill, because that practice opens the door to the evils that have come to be known as logrolling and pork barrel legislation." Cottrell v. Faubus, 347 S.W.2d 42, 53 (Ark. 1961). The Colorado Supreme Court in an advisory opinion opined that "...the evils and dangers of combinations and 'logrolling' in the matter of the appropriation of public revenue were so great that a separate provision was inserted in our constitution to protect it from improvident disbursements" In re House Bill 168, 39 P. 1096, 1098 (Colo. 1895).

The Washington Supreme Court has observed "It is obvious why a legislator would hesitate to hold up the funding of the entire state government in order to prevent the enactment of a certain provision, even though he would have voted against it if it had been presented as independent legislation." Flanders v. Morris, 558 P.2d 769, 772 (Wash. 1977).

The Pennsylvania Supreme Court has noted that "...'omnibus bills' became a crying evil, not only from the confusion and distraction of the legislative mind by the jumbling together of incongruous subjects, but still more by the facility they afforded to corrupt combinations of minorities with different interests to force the passage of bills with provisions which could never succeed if they stood on their separate merits. A still more objectionable procedure grew up, of putting what is known as a 'rider' (that is, a new and unrelated enactment or provision) on the appropriation bills, and thus coercing the executive to approve obnoxious legislation, or bring the wheels of government to a stop for want of funds." Commonwealth ex rel. Attorney General v. Barnett, 48 Atl. 976, 977 (Pa. 1901).

New Hampshire faced this entire controversy in 1984, when a state constitutional convention dealt with this subject. The convention approved a constitutional provision banning special provisions, and the voters approved that ban in a 1984 referendum by an 80-20 margin. The New Hampshire Supreme Court noted in a May 1985 advisory opinion a convention memorandum which stated that "Because the leadership in the House and Senate controlled the Committee of Conference on the Budget, the negotiating was done behind closed doors without the input of the non-leadership representatives or the public." One convention delegate who was also a legislator noted in a convention debate "[U]nless we

address and stop these abuses today, they will never be addressed by the Legislature, because as a legislator, I can tell you they are tooled to our advantage. They are something that expedites the process, and we will never, never...reform ourselves, because they are used to our advantage."

While most of the literature is negative about special provisions, some states allow permanent statutory changes as long as they relate to items in the budget, some allow temporary changes for the biennium, and almost all allow limitations and restrictions on spending. The Louisiana Supreme Court in upholding such textual commentary stated the constitutional restriction in that state "...clearly limits the content of an appropriation bill to items of appropriation of money. However, inherent in the power of appropriation is the power to specify how the money shall be spent. Therefore, in addition to distinct 'items' of appropriation, the legislature may include in an appropriation bill qualifications, conditions, limitations, or restrictions on the expenditure of funds which would not be dealt with more properly in a separate bill." Henry v. Edwards, 346 So.2d 153, 157 (La. 1977).

Until 1984, North Carolina had a statutory prohibition against omnibus appropriations bills similar to "one subject", or "one object" constitutional provisions regarding appropriations bills in Alabama, Arizona, California, Colorado, Georgia, Maryland, Mississippi, Montana, New York, North Dakota, Oklahoma, Pennsylvania, South Dakota, and West Virginia.

The North Carolina language contained in G.S. 143-15 stated "...[N]o bill carrying an appropriation shall thereafter be enacted by the General Assembly, unless it be for a single object therein described..." The 1984 Session repealed the single object rule. (Ch. 1034, S.L.1983, sec. 159-161. The single object rule was repealed because the 1983 session had adopted the first omnibus local appropriation bill in spite of the statutory prohibition, so the statute was amended to conform to the practice.

This points out a problem with statutory rules concerning the legislative process. They have only as much effect as the legislature chooses to give them. Language in the rules of the two houses would have more binding force within the legislative process. This does not mean that a statute is ineffective. It is simply that an appropriation bill passed in violation of a statute supercedes the statute. Thus, a statute setting out legislative rules is really a policy statement. No appeal to the courts is permitted, however, for violation of a legislative rule. Only putting a rule in the Constitution guarantees outside enforcement.

This memorandum is not a comprehensive review of the nuances in all the cases and provisions, but gives some overview of the restrictions in other states. For instance, there have been

entire articles written on the difference between the "subject" of a bill and the "object" of a bill, but at this stage of the process it would be more useful to provide general information and use it as guidance in helping the committee decide what to prohibit or regulate.

Reference in any footnote to "Legislative staff" indicates the legislative staff of that state.

G7-1
c.c. Tom Covington

	FORBID SPEC PROV	REGULATE SPEC PROV	FORBID OMNIBUS LOCAL APPR.
Alabama	YES[1]	N.A.	?[2]
Alaska	YES[3]	N.A.	NO
Arizona	YES[4]	N.A.	YES[5]
Arkansas	YES[6]	N.A.	YES[7]
California	YES[8]	N.A.	YES[9]
Colorado	YES[10]	N.A.	YES[11]
Connecticut	YES[12]	N.A.	NO[13]
Delaware	NO[14]	NO	NO
Florida	YES[15]	N.A.	YES[16]
Georgia	YES[17]	N.A.	YES[18]
Hawaii	YES[19]	N.A.	NO
Idaho	NO[20]	YES[21]	NO[22]
Illinois	YES[23]	N.A.	NO[24]
Indiana	YES[25]	N.A.	?
Iowa	NO	YES[26]	NO
Kansas	YES[27]	N.A.	?[28]
Kentucky	?[29]	N.A.	NO
Louisiana	YES[30]	N.A.	NO
Maine	NO	NO	NO
Maryland	YES[31]	N.A.	YES[32]
Massachusetts	YES[33]	N.A.	NO
Michigan			
Minnesota	NO[34]	NO	NO[35]
Mississippi	YES[36]	N.A.	YES[37]

	FORBID SPEC PROV	REGULATE SPEC PROV	FORBID OMNIBUS LOCAL APPR.
Missouri	YES[38]	N.A.	NO[39]
Montana	YES[40]	N.A.	?[41]
Nebraska	YES[42]	N.A.	NO
Nevada	NO	YES[43]	NO
New Hampshire	YES[44]	N.A.	NO
New Jersey	YES[45]	N.A.	NO
New Mexico	YES[46]	N.A.	NO[47]
New York	NO	YES[48]	YES[49]
N. Dakota	?[50]	YES[51]	YES[52]
Ohio	NO	YES[53]	NO[54]
Oklahoma	YES[55]	N.A.	?[56]
Oregon	YES[57]	N.A.	NO
Pennsylvania	YES[58]	N.A.	YES[59]
Rhode Island	NO	NO	NO[60]
S. Carolina	?[61]	YES[62]	NO
S. Dakota	YES[63]	N.A.	YES[64]
Tennessee	YES[65]	N.A.	NO
Texas	YES[66]	N.A.	YES[67]
Utah	YES[68]	N.A.	NO
Vermont	NO[69]	N.A.	NO
Virginia	NO	YES[70]	NO[71]
Washington	NO	YES[72]	NO
W. Virginia	YES[73]	N.A.	YES[74]
Wisconsin	NO	NO	YES[75]
Wyoming	NO	NO	YES[76]

[1]Article IV, Section 71 of the Constitution of Alabama states "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the state, for interest on the public debt, and for public schools. The salary of no officer or employee shall be increased in such bill, nor shall any appropriation be made therein for any officer or employee unless his employment and the amount of his salary have already been provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject."

[2]While Article IV, Section 71 of the Alabama Constitution provides "All other appropriations shall be made by separate bills, each embracing but one subject.", legislative staff indicates that this issue has not been litigated. In practice, Alabama just makes sure the titles of appropriations bills containing unrelated subjects are broad enough to loosely describe the bills.

[3]Article II, Section 13 of the Alaska Constitution provides "Bills for appropriations shall be confined to appropriations." Legislative Budget and Audit Committee v. Hammond, a 1983 Superior Court case, is the only construction of this provision, and includes a good analysis of the provision and comparable ones in other states. The court noted "The purpose in restricting appropriations bills to appropriations was to avoid the practice of 'logrolling'. Logrolling occurs when a measure which could not command majority legislative support on its own merits is combined with another measure or measures, and cumulatively they obtain passage. It is a particularly insidious practice when it occurs through an appropriations bill, because frquently the appropriations bill is the result of a free conference committee. Various courts have noted the evil inherent in the practice." The Alaska Superior Court notes a Washington case Flanders v. Morris, 558 P.2d 769, 772 (Wash. 1977) where the Court stated "It is obvious why a legislator would hesitate to hold up the funding of the entire state government in order to prevent the enactment of a certain provision, even though he would have voted against it if it had been presented as independent legislation."

[4]Article 4, Section 20 of the Arizona Constitution states "The general appropriation bill shall embrace nothing but appropriations for the different departments of the State, for State institutions, for public schools, and for interest on the public debt."

[5]Article 4, Section 20 of the Arizona Constitution provides "All other appropriations shall be made by separate bills, each embracing but one subject."

[6]Article V, Section 30 of the Arkansas Constitution provides "The general appropriation bill shall embrace nothing but appropriations for the ordinary expense of the executive,

legislative, and judicial departments of the State..." Legislative staff notes that substantive provisions are acceptable if they define the purpose for which an appropriation is made or restrict or limit the purposes for which funds appropriated may be used.

[7]Section 30 of Article V of the Arkansas Constitution concludes by stating "...all other appropriations shall be made by separate bills, each embracing but one subject." The Arkansas Supreme Court has stated this provision is to "...prevent the inclusion of separate and unrelated appropriations in a single bill, because that practice opens the door to the evils that have come to be known as logrolling and pork barrel legislation." Cottrell v. Faubus, 347 S.W.2d 52, 53 (Ark. 1961).

[8]Article IV, Section 9 of the California Constitution states "A statute shall embrace but one subject..." Although Article IV, Section 12 of the California Constitution allows the budget bill to contain more than one item of appropriation, legislative staff indicates the budget bill is otherwise subject to the limitations of Section 9, and may not be used for the purpose of legislation. See, Association for Retarded Citizens v. Department of Developmental Services, 38 Cal.3d 384 (1985). Legislative staff indicates that bills, other than the Budget Bill, which enact substantive legislation may also contain an appropriation which effectuates the substantive provisions of the legislation.

[9]Article IV, Section 12 of the California Constitution states "No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose."

[10]Article V, Section 32 of the Colorado Constitution provides "The general appropriation bill shall embrace nothing but appropriations for the expense of the executive, legislative and judicial departments of the state, state institutions, interest on the public debt, and for public schools. The Colorado Court of Appeals has stated "The sole purpose of the 'Long Bill' is to meet charges against the public funds by affirmative acts of the General Assembly; thus the 'Long Bill' may only be used to provide funds for programs that have been separately authorized and specifically detailed in other bills." Dodge v. Department of Social Services, 677 P.2d 969, 975 (Colo. Ct. App. 1982).

[11]Article V, Section 32 of the Colorado Constitution concludes "All other appropriations shall be made by separate bills, each embracing but one subject." Article V, Section 21 of the Colorado Constitution states "...No bill, except general appropriation bills, shall be passed containing more than one subject." The Colorado Supreme Court has noted of the origin of these provisions, "...the evils and dangers of combinations and 'logrolling' in the matter of the appropriation of public revenue were so great that a separate provision was inserted in our constitution to protect it from improvident disbursements." In re

House Bill 168, 39 P. 1096, 1098 (Colo. 1895).

[12]C.G.S. 2-35 prohibits general legislation in an appropriations bill except where it implements appropriations provisions. It states in part "Each appropriation bill ... may contain any legislation necessary to implement its appropriations provisions, provided no other general legislation shall be made a part of such appropriation bill." Since this provision is statutory there is no court enforcement. Joint Rule 3.A.(1) states specifically that when a bill is referred from another committee to appropriations, the appropriations committee's "...consideration shall be limited to their fiscal aspects and appropriations provisions of such bills and resolutions and shall not extend to their other subtantive provisions or purpose, except to the extent that such other provisions or purpose relate to the fiscal aspects and appropriations provisions of such bills."

[13]Connecticut has few specific special appropriations. Local grants-in-aid are generally covered by statutory provisions, and individual grants are administered through state agencies, usually by contracts.

[14]Legislative staff indicates Delaware does put substantive legislation in the appropriations bill. Article II, Section 16 of the Delaware Constitution states "No bill or joint resolution, except bills appropriating money for public purposes, shall embrace more than one subject.", this indirectly allowing substantive provisions on appropriations bills.

[15]Section 12 of Article III of the Florida Constitution provides that "Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject." Legislative staff indicates that in 1983, the Legislature "got tired of having the Governor and various cabinet members and state agencies engaged in periodic law suits involving the General Appropriations Act. Consequently, a new system was adopted under which much of the proviso language is included in a separate bill, commonly known as the 'implementing bill' The implementing bill has not yet been challenged as being violative of the single-subject requirement." Section 6 of Article II of the Florida Constitution requires that all laws be limited to a single subject and matters properly related to that subject. The Florida Supreme Court noted in Department of Education v. Lewis, 416 So.2d 455 (1982) "An extensive body of constitutional law teaches that the purpose of Article III, section 6 is to ensure that every proposed enactment is considered with deliberation and on its own merits. A lawmaker must not be placed in the position of having to accept a repugnant provision in order to achieve adoption of a desired one."

[16]Article III, Section 6 of the Florida Constitution contains a single object rule. Legislative staff indicates that omnibus local appropriations bills have never been used in Florida.

[17]Article III, Section IX, Paragraph III of the Constitution of the State of Georgia provides "The general appropriations bill shall embrace nothing except appropriations fixed by previous laws; the ordinary expenses of the executive, legislative, and judicial departments of the government; payment of the public debt and interest thereon; and for support of the public institutions and educational interests of the state."

[18]The constitutional provision cited in the previous footnote concludes "All other appropriations shall be made by separate bills, each embracing but one subject."

[19]While the Constitution does not speak directly to the issue of substantive legislation, Article III, Section 14 of the Hawaii Constitution provides "Each law shall embrace but one subject...", a provision which legislative staff has said has been construed to prohibit substantive legislation.

[20]Idaho legislative staff notes that as a matter of practice and tradition, it is very rare that a substantive bill would also contain an appropriation. Idaho does not have a general appropriations bill, relying instead on about 120 separate bills.

[21]Article 3, Section 16 of the Idaho Constitution states "Every act shall embrace but one subject and matters properly connected therewith..." This one subject rule might limit substantive legislation to that relating to the specific appropriation in the bill.

[22]Idaho does not appropriate money directly for local projects of any sort.

[23]Article IV, Section 8 of the Illinois Constitution states "Appropriations bills shall be limited to the subject of appropriations."

[24]Legislative staff indicates omnibus local appropriations are not forbidden but are little used. State assistance to local governments is usually appropriated to a state agency in one lump sum which is then distributed to the various units according to a formula.

[25]Article 4, Section 19 of the Indiana Constitution states "An act ... shall be limited to one subject and matters properly connected therewith." In Official Opinion No. 13, 8/19/1975, the Attorney General of Indiana noted "Appropriation Acts are limited by the Indiana Constitution to the subject matter of money. They cannot create, amend, or repeal the substantive laws."

[26]Article 3, Section 29 of the Iowa Constitution states that "Every act shall embrace but one subject, and matters properly connected therewith...."

[27]Article 2, Section 16 of the Kansas Constitution states "No bill shall contain more than one subject, except appropriation bills..." The Kansas Supreme Court held that this exception only dealt with different subjects of appropriations, and that "...appropriation bills may not include subjects wholly foreign and unrelated to their primary purpose: authorizing the expenditure of specific sums of money for specific purposes." Kansas ex. rel Stephan v. Carlin, 230 Ks. 252 (1981).

[28]Article 11, Section 9 of the Kansas Constitution states "The state shall never be a party in carrying on any work of internal improvement except...(1)...highways...;(2)...flood control works and works for the construction or development of water resources." Legislative staff indicates that state rarely appropriates funds directly to a non-state organization.

[29]While Section 51 of the Kentucky Constitution provides that "No law enacted by the General Assembly shall relate to more than one subject...", and requires statutes amended to be set out at length, legislative staff indicates that a case is currently pending on this issue as to applicability on substantive provisions in the appropriations bill. (Commonwealth ex rel. Armstrong v. Collins, 84-CI-0787, Franklin Circuit Court, filed 6/6/84.)

[30]Article 3, Section 16(C) of the Louisiana Constitution provides "The general appropriation bill shall be itemized and shall contain only appropriations for the ordinary operating expenses of government, public charities, pensions, and the public debt or interest thereon." The Lousiana Supreme Court has held that this provision "...clearly limits the content of an appropriation bill to items of appropriation of money. However, inherent in the power of appropriation is the power to specify how the money shall be spent. Therefore, in addition to distinct 'items' of appropriation, the legislature may include in an appropriation bill qualifications, conditions, limitations, or restrictions on the expenditure of funds which would not be dealt with more properly in a separate bill." Henry v. Edwards, 346 So. 2d 153, 157 (La. 1977). The court went on to add "The distinction between what constitutes a condition or limitation properly included in a general appropriation bill and what amounts to a provision which is essentially a matter of general legislation more properly dealt with in a separate enactment appears, on first consideration, to be difficult to draw....These provisions were never intended to hamstring the legislature in its legitimate efforts to control the purse strings of government. On the other hand, legislative control cannot be exercised in such a manner as to encumber the general appropriation bill with veto-proof 'logrolling' measures, special interest provisions which could not succeed if separately enacted, or 'riders', substantive pieces of legislation incorporated in a bill to insure passage without veto. It is not enough that a provision be related to the institution or agency to which funds are appropriated. Conditions and limitations properly

included in an appropriation bill must exhibit such a connexity with money items of appropriation that they logically belong in a schedule of expenditures. We conclude...that the ultimate test is one of appropriateness." Id. at 158.

[31]Article III, Section 52 of the Maryland Constitution provides that the Governor prepares and submits the budget bill to the General Assembly. The power of the legislature is itemized in that section. "The function and effect of the Budget Bill ... is to appropriate money, not to legislate generally." 59 Opinions of the Attorney General 70, 75 (1974). The General Assembly may "...condition or limit the use of money appropriated, or the use of the facility for which the money is appropriated, provided the condition or limitation is directly related to the expenditure of the sum appropriated, does not, in essence, amend ...substantive legislation... and is effective only during the fiscal year for which the appropriation is made." Bayne v. Secretary of State, 283 Md. 560, 574 (1978). Legislative staff indicates that supplemental appropriations bills may contain substantive provisions related to the same subject as the supplemental appropriation, because of the one subject rule for legislation.

[32]Article III, Section 52(8)(a) of the Maryland Constitution requires every appropriation not made by the Budget Bill "...shall be embodied in a separate bill limited to some single work, object, or purpose therein stated."

[33]Section 7L of Chapter 20 of the General Laws of Massachusetts states that "A law making an appropriation for expenses of the commonwealth shall not contain provisions on any other subject matter. As used in this section, expenses of the commonwealth shall include expenses of the executive, legislative, and judicial departments, interest, payments on the public debt, local aid, and other items of expense authorized or required by existing law." Substantive legislation does still appear in appropriations bills, according to legislative staff.

[34]While Minnesota has a one subject clause, in practice the various sections of a bill need only be generically related, according to legislative staff.

[35]While Article IV, Section 17 of the Minnesota Constitution provides "No law shall embrace more than one subject...", legislative staff indicates in practice the various sections of a bill need be only generically related. While no appropriation has been voided because of the provisions, staff indicates the legislature "respects" the clause so enforcement by the courts is unnecessary.

[36]Article 4, Section 69 of the Mississippi Constitution state that "General appropriation Bills shall contain only the appropriations to defray the ordinary expenses of the executive, legislative, and judicial departments of the government; to pay interest on state bonds and to support the common schools. All

other appropriations shall be made by separate bills, each embracing but one subject. Legislation shall not be engrafted on appropriation Bills, but the same may prescribe the conditions on which the money may be drawn, and for what purposes paid." House Rule 111 repeats this provision.

[37]Article 4, Section 69 of the Mississippi Constitution states that appropriations other than the General appropriation bill "...shall be made by separate bills, each embracing but one subject."

[38]Article III, Section 23 of the Missouri Constitution provides "No bill shall contain more than one subject...except general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated." The Missouri Supreme Court has interpreted this to mean "...legislation of a general character cannot be included in an appropriation bill." State ex rel. Davis v. Smith, 75 S.W.2d 828, 830 (1934).

[39]While Article III, Section 23 of the Missouri Constitution provides "No bill shall contain more than one subject...except general appropriation bills", legislative staff indicates this provision would not prevent an omnibus local bill. In fact, that state does not directly appropriate any funds for special local projects.

[40]Article V, Section 11(4) of the Montana Constitution provides "A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools." Joint Rule 6-4 repeats this constitutional provision. M.C.A. 17-8-103(2) expands on this by stating "A condition or limitation contained in an appropriation act shall govern the administration and expenditure of the appropriation until the appropriation has been expended for the purpose set forth in the act or until such condition or limitation is changed by a subsequent appropriation act. In no event does a condition or limitation contained in an appropriation act amend another statute." Legislative staff notes that while the main budget bill may not contain substantive provisions, it may contain conditions and limitations on administration and expenditure. A bill may appropriate money for the specific purpose of carrying out a substantive provision of that law, i.e. creating a lottery and appropriating money to pay expenses of the lottery.

[41]While the constitutional provision in the previous footnote concludes "Every other appropriation shall be made by a separate bill, containing but one subject", staff indicates that this has been construed to allow bills to appropriate monies to many objects, as long as there is but one subject. The subject could be incarceration of criminals, and the objects renovating jails, hiring more guards, creating and funding an ombudsman, and setting up a prison industries program. By analogy to the North

Carolina situation, this would allow one bill to appropriate funds to 100 different fire departments, but not also to an arts council.

[42]Article III, Section 22 of the Nebraska Constitution provides "Bills making appropriations for the pay of members and officers of the legislature and for the salaries of the officers of the Government shall contain no provision on any other subject." Article III, Section 14 states "No bill shall contain more than one subject..." Although Section 30 appears to indicate that salaries must be in a completely separate bill, the Indiana Supreme Court has stated that they may be in the general appropriations bill because while Section 30 provides that the salaries may not be in a bill on "...any other subject...", appropriations to state agencies generally are not another subject. Rein v. Johnson, 149 Neb. 67, 82 (1947). Indiana legislative staff indicates that while substantive legislation on an appropriations bill is not permissible, an appropriation on a substantive bill is permissible, if it relates to the subject of the program for which substantive legislation is being enacted.

[43]The provisions of Article 4 of Section 17 of the Nevada Constitution provide that "Each law enacted by the Legislature shall embrace but one subject, and matter, properly connected therewith...." Thus, any substantive legislation which was not related to the subject of appropriations would be unconstitutional. See, State v.Silver, 9 Nev. 227 (1874).

[44]Article 18-a of Part 2 of the New Hampshire Constitution, adopted in 1984, states "All sections of all budget bills before the general court shall contain only the operating and capital expenses for the executive, legislative and judicial branches of government. No section or footnote of any such budget bill shall contain any provision which establishes, amends or repeals statutory law, other than provisions establishing, amending or repealing operating and capital expenses for the executive, legislative, and judicial branches of government." According to an Advisory Opinion of the New Hampshire Supreme Court, dated May 10, 1985, this Constitutional Amendment was adopted by a State Constitutional Convention in 1984. The practice of adding budget footnotes (what North Carolina calls "special provisions") began in the 1970's. The Supreme Court notes one memorandum which stated "Because the leadership in the House and Senate controlled the Committee of Conference on the budget, the negotiating was done behind closed doors without the input of the non-leadership representatives or the public. The representatives also faced an all or nothing choice when the Conference report came back to the floor...." The adopted minority report on the constitutional amendment noted that the amendment "would prevent infamous footnotes which have appeared in increasing numbers in recent years." One convention delegate noted "There are two kinds of footnotes. One kind is fiscal in character. It is fiscal management of the budget entries. That kind, which constitutes

the majority of the sections, is not touched in this proposal. The footnotes that are touched are those that amend, repeal, or enact statutory law." Another convention delegate, who was also a state legislator noted in the convention "[U]nless we address and stop these abuses today, they will never be addressed by the Legislature, because as a legislator, I can tell you they are tooled to our advantage. They are something that expedites the process, and we will never, never, I submit to you, we will never close these loopholes, and we will never reform ourselves, because they are used to our advantage." The amendment received an 80% favorable vote in a 1984 referendum.

[45]Article IV, Section VII, par. 4 of the New Jersey Constitution states "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object...", and paragraph 5 of the same section requires statutes amended to be set out at length. Legislative staff indicates that such provisions prohibit the amendment of existing law or the promulgation of new substantive law in an act the main purpose of which is the appropriation of state funds. The Attorney General has held "...it would appear that the purpose of appropriation legislation would not extend to the amendment of permanent law." Formal Opinion of the Attorney General No. 15-1975. More recently, the New Jersey Supreme Court held that the budget bill can include matters "related to appropriations or the expenditure of appropriated sums." Karcher v. Kean, 97 N.J. 483, 511 (1984).

[46]Article IV, Section 16 of the New Mexico Constitution provides "General appropriation bills shall embrace nothing but appropriations for the expense of the executive, legislative and judiciary departments, interest, sinking fund, payments on the public debt, public schools and other expenses required by existing laws."

[47]Article IV, Section 16 of the New Mexico Constitution provides "All other appropriations shall be made by separate bills." Note that this provision does not conclude "...each embracing but one subject." as is found in many other states. Legislative staff states that in fact they do have an omnibus bill they call a "Christmas tree".

[48]Article VII, Section 6 of the New York Constitution provides "No provision shall be embraced in any appropriation bill submitted by the Governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation."

[49]Article VII, Section 6 of the New York Constitution provides "Except for the appropriations contained in the bills submitted by the Governor and in a supplemental appropriation bill for the support of government, no appropriations shall be made except by

separate bills each for a single object or purpose."

[50]While Article IV, Section 36 of the North Dakota Constitution provides "The general appropriation bill shall embrace nothing but appropriations for the expenses of the executive, legislative and judicial departments of the state, interest on the public debt, and for public schools.", staff indicates that the state does not use a general appropriation bill, instead having a bill for each department. These bills will have substantive provisions relating to the department covered by the bill.

[51]North Dakota Senate Rule 511 provides "The Committee on Appropriations shall not change the intent of any measure rereferred to it after a hearing in another standing committee of the Senate, unless necessitated by consideration of the appropriation contained in the measure."

[52]Article IV, Section 36 of the North Dakota Constitution provides "All other appropriations shall be made by separate bills, each embracing but one subject."

[53]While Article II, Section 15(D) of the Ohio Constitution provides "No bill shall contain more than one subject..." the Ohio Supreme Court has held that the purpose of the provision is not to prevent multiple subjects but to stop disunified subjects, thus they have to be unrelated to be void. The provision has been held to be directory rather than mandatory, and specifically a bill changing a program and appropriating funds to that program is not void because "...there seems to be no serious contention that an appropriation is in itself a second subject, therefore, an act may, for example, establish an agency, set out the regulatory program, and make an appropriation for the agency without violating the one-subject rule." State v. Celeste, 11 Ohio Bar Reports 436, 441 (1984), quoting with approval Ruud, "No Law Shall Embrace More Than One Subject" (1958) 42 Minn. L. Rev. 389, 441".

[54]Legislative staff states Ohio does not have an omnibus local appropriations bill. Some appropriations to agencies like volunteer fire departments and drama groups do appear in the Main Approproation Bill and the Capital Improvements Bill.

[55]Article 5, Section 56 of the Oklahoma Constitution states that "The General appropriations bill shall embrace nothing but appropriations for the expenses of the executive, legislative, and judicial departments of the State, and for interest on the public debt. The salary of no officer or employee of the State, or any subdivision thereof, shall be increased in such bill, nor shall any appropriation be made therein for any such officer or employee, unless his employment and the amount of his salary shall have been already provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject." However, Oklahaoma does not in fact use general appropriations bills, so as a practical matter this limitation is meaningless.

The one subject rules in Article 5, Section 57 ("Every act of the Legislature shall embrace but one subject...except general appropriations bills, general revenue bills, and bills adopting a code, digest, or revision of statutes...") has not been construed as prohibiting substantive legislation in appropriations bills. House Rule 3, Section 2(b) does state that the House may not consider a bill "If said bill or resolution has been amended by the insertion of matter not germane to the purpose of the original bill or resolution."

[56]While Article 5, Section 56 of the Oklahoma Constitution provides "All other appropriations shall be made by separate bills, each embracing but one subject.", this issue has not been litigated. Legislative staff indicates that state has an omnibus bill for "various state agencies" on the theory that such appropriations are for but one subject.

[57]Article IX, Section 7 of the Oregon Constitution provides "Laws making appropriations, for the salaries of public officers, and other current expenses of the State, shall contain provisions upon no other subject."

[58]Article III, Section 11 of the Pennsylvania Constitution provides "The general appropriation bill shall embrace nothing but appropriations for the executive, legislative, and judicial departments of the Commonwealth, for the public debt, and for public schools." This language is repeated in Senate Rule 7(a).

[59]Article III, Section 11 of the Pennsylvania Constitution provides "All other appropriations shall be made by separate bills, each embracing but one subject." This language is repeated in Senate Rule 7(a).

[60]Article 4, Section 14 of the Rhode Island Constitution does provide that "The assent of two-thirds of the members elected to each house of the General Assembly shall be required to every bill appropriating the public money or property for local or private purposes."

[61]Article III, Section 17 of the South Carolina Constitution provides "Every act or resolution having the force of law shall relate to but one subject...", this statute has been applied to the appropriations bill with a test of germaneness to the matter of appropriating money and raising revenue, Powell v. Red Carpet Lounge, 311 S.E. 2d 719 (S.C. 1984), or with a test of reasonable relation to the subject of making appropriations to meet government expenses and to direct the manner of expenditures of these funds, Maner v. Miller, 296 S.E.2d 533 (S.C. 1982). A case is currently pending concerning that issue.

[62]S.C. Code 11-11-440(A), enacted in 1984, provides "The General Assembly may not provide for any general tax increase or enact new general taxes in the permanent provisions of the State General

Appropriation Act or acts supplemental thereto, and any such general tax increases or new general taxes must be enacted only by separate act." Legislative staff notes that this statutory provision is not binding on the General Assembly.

[63]Article XII, Section 2 of the South Dakota Constitution provides that "The general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative, and judicial department of the state, the current expenses of state institutions, interest on the public debt, and for common schools. All other appropriations shall be made by separate bills, each embracing but one object, and shall require a two-thirds vote of all the members of each branch of the Legislature. South Dakota legislative staff indicates that substantive legislation may be contained in special appropriations bills.

[64]Article XII, Section 2 of the South Dakota Constitution provides that "All other appropriations shall be made by separate bills, each embracing but one object."

[65]Article II, Section 17 of the Tennessee Constitution provides "No bill shall become a law which embraces more than one subject..." T.C.A. 9-6-108 provides "The appropriation bill shall not contain any provisions of general legislation." The Attorney General has held that the constitutional provision on single subject forbids substantive legislation in an appropriations bill. Opinion 194, May 12, 1983.

[66]Article 3, Section 35 of the Texas Constitution provides "No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject..." Texas House Rule 8, Section 4 provides "A general law may not be changed by the provisions in an appropriations bill." An explanatory note to the House Rules states "There are many rulings which hold that a general law may not be changed in an appropriation bill, but the right of the legislature to attach conditions to an appropriation has been upheld." Legislative staff notes the parenthetical reference to general appropriations bills in Section 35 has been construed as recognition that appropriations is a single subject rather than as an exception to the unity of subject requirement, see Moore v. Shepard, 192 S.W. 2d 559 (1946).

[67]Article III, Section 35 of the Texas Constitution is cited in the previous footnote. Legislative staff states that appropriations bills other than a general appropriations bill is subject to the single subject rule, and thus multiple appropriations in a bill other than a general appropriations bill must have a common subject other than "appropriations".

[68]Article VI, Section 22 of the Utah constitution provides "Except general appropriation bills...no bill shall be passed

containing more than one subject." Case law forbids substantive legislation on appropriations bills. In Petty v. Utah Board of Regents, 595 P.2d 1299, 1301 (1979), the Utah Supreme Court stated "...the purpose of the Appropriations act is to allocate finances, and not to affect substantive changes in the law on other matters. Consequently, it is our opinion that such an expression of intent in an appropriations act should not be regarded as repealing or superseding other statutory law." Utah Code 63-38-13 does provide "Any and all conditions as may be attached to items of appropriation made by the appropriations act not inconsistent with law shall be binding upon the recipient of any such appropriation." Utah Joint Rule 4.14 provides "The legislature may attach conditions to items of appropriation in appropriations bills."

[69]Legislative staff indicates that "...while we have no specific prohibition on this practice, there is a tradition in the Vermont legislature that substantive provisions should be kept to a minimum in appropriations bills. This tradition is founded on the comity and respect which the appropriations committees generally accord to other standing committees of the Legislature. However, each year a few substantive provisions appear in general appropriations acts." (letter of William P. Russell, Chief Legislative Counsel, to Gerry Cohen, September 25, 1985.)

[70]Article IV, Section 12 of the Virginia Constitution states "No law shall embrace more than one subject..." The courts have been liberal in allowing the legislature the freedom to include a great many provisions within a broad subject area into a single bill. However, legislative staff indicates that the courts do not allow logrolling, including a provision that might have difficulty passing on its own merits within a bill that is sure to pass.

[71]While Article IV, Section 12 of the Virginia Constitution provides "No law shall embrace more than one subject...", legislative staff indicates that this rule has been liberally construed, and an omnibus local bill would probably be allowed. In practice, no such acts are passed in that state.

[72]Article II, Section 19 of the Washington State Constitution provides "No bill shall embrace more than one subject...", and Article II, Section 37 of that Constitution provides "No act shall ever be revised or amended by mere reference to its title, but the act revised or section amended shall be set forth at full length." In a fact situation where codified eligibility standards were set for a public assistance program by codified law, the legislature attempted to add an additional requirement with an uncodified provision. The Washington Supreme Court construed the two constitutional sections together so that "General law cannot be suspended by provisions in appropriations bills which are in conflict." Flanders v. Morris, 558 P. 2d 769 (1977). Legislative staff notes that although the case statement seems absolute, if the title of the bill had noted the change and the eligibility

statute had been actually amended in the bill, the case result might be different.

[73]Article 6, Section 51 of the West Virginia Constitution, does not specifically speak to legislation in an appropriations bill, but in specifically listing what is to be in the budget submitted by the governor, and limiting the power of the legislature to amend the budget bill, appears to have prohibited substantive legislation. The Attorney General has noted that the inclusion of general legislation in an appropriation act renders such legislation void, 45 Op. Att'y Gen. 543 (1953).

[74]Article 6, Section 51C(7)(a) of the West Virginia Constitution provides "Neither house shall consider other appropriations until the budget bill has been finally acted upon by both houses, and no such other appropriations shall be valid except in accordance with the provisions following: (a) Every such appropriation shall be embodied in a separate bill limited to some single work, object, or purpose therein stated and called therein a supplementary appropriation bill..."

[75]Article IV, Section 18 of the Wisconsin Constitution provides that "No private or local bill which may be passed by the Legislature shall embrace more than one subject..." Legislative staff indicates that this provision would forbid an omnibus bill making local appropriations to specified grantees.

[76]Article III, Section 24 of the Wyoming Constitution states "No bill, except general appropriations bills ... shall be passed containing more than one subject."

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October 3, 1985

M E M O R A N D U M

TO: Senate Select Committee on the Appropriations Process

FROM: Sabra J. Faires SJF
Staff Attorney

SUBJECT: The Public Purpose Doctrine

The public purpose doctrine restricts the power of the General Assembly, and of local governmental units, to raise revenue through taxes and to appropriate tax and nontax revenues of the State or governmental unit. In accordance with this doctrine, taxes may be levied only for a public purpose and funds may be appropriated only for a public purpose.

The public purpose doctrine is imposed on governmental entities by the North Carolina Constitution as well as the United States Constitution. Article V, §2(1) of the North Carolina Constitution contains a partial statement of this doctrine, providing that "[t]he power of taxation shall be exercised in a just and equitable manner, for public purposes only". The similar restriction on appropriations of revenue is supplied by judicial interpretation of this constitutional provision. The Supreme Court of North Carolina has repeatedly held that the power to appropriate funds from the public treasury is no greater than the power to levy taxes to generate the funds. The same restrictions on levying taxes and appropriating funds would apply in the absence of this state constitutional provision, however, because the due process clause of the Fifth Amendment of the United States Constitution, as interpreted by the United States Supreme Court, mandates that taxes be levied only for public purposes and that public funds be used only for public purposes.

Although it is clear that public funds may be appropriated only for a public purpose, it is not clear what is and is not a public purpose. Neither the United States Supreme Court nor the North Carolina Supreme Court has formulated a definition of public purpose. Instead, the determination of whether an appropriation is for a public purpose is made on a case-by-case basis, with the court emphasizing one factor in one case and a different one in another. In fact, the North Carolina Supreme Court freely admits that a definition of public purpose cannot be established once and for all because "the concept expands with the population, economy, scientific knowledge, and changing conditions." Thus, what once was considered a public purpose may no longer be one and, likewise, what was previously not a public purpose may become one. Appropriations to chambers of commerce, for example, were once held invalid but were subsequently upheld as being for a public purpose.

In making an appropriation, the General Assembly or local governmental unit obviously determines that the appropriation is for a public purpose. Statements or findings by the appropriating entity that an appropriation is for a public purpose are not conclusive, however, and a reviewing court uses its own judgment to determine whether an appropriation satisfies the public purpose requirement. In reviewing an appropriation, the court will presume, as it will with all legislation, that the appropriation is valid and will uphold the appropriation unless it is clearly established that the appropriation is not for a public purpose.

In reviewing the North Carolina cases on public purpose, two different approaches to the issue can be discerned. In most of the cases, the court focuses on the benefits to be obtained by the appropriation in question and weighs the benefits accruing to the public against those accruing to individuals or other private entities as a result of the appropriation. If the public benefits outweigh the private benefits, the appropriation is held to be for a public purpose. Conversely, if the private benefits outweigh the public benefits, the appropriation is held to be invalid. In a few cases, the court considers the public versus private benefits of the appropriation, but focuses more on whether the appropriation is for an activity in which the government should be engaged. If the activity is found to be a proper function of government, the appropriation is held to be for a public purpose. If the activity is found to be one that is not a proper function of government, such as operating a hotel or aiding business ventures through the issuance of tax-exempt revenue bonds, the appropriation is held invalid even though it may result in substantial public benefits. In several cases concerning tax-exempt revenue bonds, the court has made clear that it is not a function of government either to engage in private business itself or to aid particular business ventures, and that the government may invade the private sector only when private enterprise has demonstrated its inability or its unwillingness to meet a public need.

Even though some uncertainty surrounds the meaning of public purpose, several principles can be drawn from the numerous North Carolina cases on the public purpose doctrine. First, an appropriation that is for a necessary expense of government, such as salaries of governmental employees and the construction of governmental office buildings, is for a public purpose. Second, because the State through its police power has the authority to protect or promote the health, morals, order, safety, and general welfare of society, appropriations for government-run programs or facilities that promote one of these purposes are for public purposes. For example, appropriations to train policemen, establish a county hospital, and establish a park are for public purposes. Third, an appropriation for a public purpose can be made to a private entity. Fourth, an appropriation that benefits the public more than it benefits private entities is for a public purpose unless it requires the government to intrude unnecessarily into the private sector. Finally, a purpose that violates the constitution by promoting religion or in some other way, exclusive of the public purpose requirement, cannot be for a public purpose.

The attached tables list purposes that have been examined by the North Carolina courts to determine whether they comply with the public purpose requirement. Purposes that have been found unconstitutional are listed in Table I; those that have been upheld are listed in Table II. In addition to the cases in the tables, the following articles are helpful to an understanding of the public purpose doctrine in North Carolina: Municipal Bonds - North Carolina Enters the Housing Market, 19 Wake Forest Law Review 931 (1983); Constitutional Law - Public Purpose - Restricting Revenue Bond Financing of Private Enterprise, 52 N.C. Law Review 859 (1974); Municipal Corporations - Public Purpose - Taxation and Revenue Bonds To Finance Low-Income Housing, 49 N.C. Law Review 830 (1971); Municipal Corporations - Taxation - Meaning of Public Purpose, 25 N.C. Law Review 504 (1947).

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Table I: No Public Purpose

Case	Tax or Appropriation and Purpose	Decision
Stanley v. Department of Conservation and Development, 284 N.C. 15 (1973)	Issuance of tax-exempt revenue bonds by county Pollution Abatement & Industrial Facilities Financing Authorities to provide funds to construct pollution control facilities and industrial facilities that would ultimately be conveyed to private industry.	Bonds are invalid; issuing tax-exempt bonds to aid particular businesses found not to be a proper function of government; benefits to public found to be incidental compared to benefits to private entities.
Foster v. N.C. Medical Care Comm'n., 283 N.C. 110 (1973)	Appropriation to enable Medical Care Commission to issue tax-exempt revenue bonds to construct hospitals that would ultimately be conveyed to public or private, nonprofit entities.	Appropriation invalid; financing the construction of hospitals to be privately operated, managed, and controlled not a public purpose because tax revenues may not be used for private entities, "no matter how benevolent".
Mitchell v. N.C. Indus. Dev. Financing Auth., 273 N.C. 137 (1968)	Appropriation to enable N.C. Industrial Financing Authority to issue tax-exempt revenue bonds to finance industrial facilities that, upon construction, were to be leased to private industry.	Appropriation invalid; financing the construction of private industrial facilities found not to be a proper function of government; social order found not to be threatened by widespread unemployment.
Nash v. Town of Tarboro, 227 N.C. 283 (1947)	Tax levy to pay for general obligation bonds issued to finance construction of hotel by Town.	Tax and bonds invalid; a municipality cannot embark in a private enterprise and the operation of a hotel is essentially a private business; a hotel would serve useful purpose but its incidental benefits are too few to make it a public purpose.

Table II: Public Purpose

Case	Tax or Appropriation and Purpose	Decision
North Carolina ex. rel Horne v. Chafin, 62 N.C. App. 95, aff'd per curiam, 309 N.C. 813 (1983)	Appropriation by Charlotte City Council and Mecklenburg County Commissioners for reception honoring General Assembly and Senate President Pro Tem.	Upheld; presenting local interests to legislators found to be a proper function of local government and to benefit residents of Charlotte-Mecklenburg.
Kiddie Korner Day Schools, Inc. v. Charlotte-Mecklenburg Bd. of Educ., 55 N.C. App. 134 (1981)	Expenditure of funds by county board of education for extended day program at elementary school.	Upheld; program found to further education and bestow greater public than private benefit.
In re Housing Bonds for Persons of Moderate Income, 307 N.C. 52 (1982)	Issuance by Housing Finance Agency of tax-exempt revenue bonds to finance individual mortgage loans for moderate-income persons and to finance project development loans for moderate-income residential housing.	Upheld; providing housing to persons otherwise unable to attain it is a public purpose provided similar mortgage loans unavailable from private lenders.
Hughey v. Cloninger, 297 N.C. 86 (1979)	Appropriation by county board of commissioners to Dyslexia School of N.C., a private, nonprofit school.	Public purpose upheld but appropriation declared invalid because no statute authorized county to spend money for this purpose.
Martin v. N.C. Housing Corp., 277 N.C. 29 (1970)	Appropriation to enable N.C. Housing Corp. to issue tax-exempt revenue bonds to finance individual mortgage loans for low-income persons and to finance project development loans for construction of low-income residential housing.	Upheld; providing safe, sanitary housing for persons who could not otherwise obtain the housing is a public purpose; public benefit outweighs private; private enterprise found unable to meet this need.

Case	Tax or Appropriation and Purpose	Decision
State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576 (1970)	Issuance of tax-exempt revenue bonds to finance loans to needy students.	Upheld; public benefit of education greater than private benefit to individuals that qualify for the loans; commercial lenders found unwilling to make these loans.
Keeter v. Town of Lake Lure 264 N.C. 252 (1965)	Issuance of municipal revenue bonds to finance purchase of lake and power plant that, by contract with Duke Power, served the Town.	Upheld; municipal ownership of plant and lake a proper municipal purpose; purchase of plant and lake found necessary to preserve the existence of the Town.
Horton v. Redevelopment Comm'n of High Point, 262 N.C. 306 (1964)	Appropriation and issuance of municipal revenue bonds to finance urban redevelopment project.	Upheld; redevelopment, slum clearance and urban renewal are public purposes construction of municipal off-street parking facilities may or may not be a public purpose depending on facts.
Morgan v. Town of Spindale, 254 N.C. 304 (1961)	Tax levy to pay fo general obligation bonds issued to finance construction of armory facilities for N.C. National Guard.	Upheld; protection against invasion and maintenance of peace and order are governmental functions.
Dennis v. City of Raleigh, 253 N.C. 400 (1960)	Appropriation to Raleigh Chamber of Commerce to advertise advantages of Raleigh to prospective industry.	Upheld; advertising the natural advantages, resources, and adaptability of locality with the object of increasing the locality's trade and commerce and encouraging people to settle in community found to be a public purpose.
Ramsey v. Rollins, 246 N.C. 647 (1957)	Tax levy to pay for county general obligation bonds issued to finance water and sewer systems.	Upheld; construction of water and sewer systems a necessary governmental expense.

Case	Tax or Appropriation and Purpose	Decision
City of Greensboro v. Smith, 241 N.C. 363 (1955)	Appropriation to construct war memorial consisting of auditorium and recreation facilities.	Upheld; expenses found not to be necesssary governmental functions but held to be for public purpose.
Jamison v. City of Charlotte, 239 N.C. 682 (1954)	Tax levy to pay for issuance of general obligation bonds to finance public library.	Upheld; library found to be a means c education, which is a public purpose.
City of Greensboro v. Smith, 239 N.C. 138 (1954)	Appropriation to build municipal swimming pool as part of city's recreational system.	Upheld; not a necessary expense but for a public purpose.
Green v. Kitchin, 229 N.C. 450 (1948)	Appropriation by Town of Weldon to reimburse town policeman for training at FBI's National Police Academy.	Upheld; appropriation found to be for maintenance of law and order, which i a recognized and essential object of government; direct reimbursement to police officer irrelevant because the test is not who receives money but the purpose for which it is to be expended.
Greensboro-High Point Authority v. Johnson, 226 N.C. 1 (1945)	Appropriation by Guilford County, Greensboro, and High Point to Greensboro-High Point Airport Authority.	Upheld; establishment and maintenance of airport serves public need and is for public purpose.
Turner v. City of Reidsville, 224 N.C. 42 (1944)	Tax levy to pay for municipal general obligation bonds issued to establish and maintain municipal airport.	Upheld; for public purpose even thou no airline then stopped at Reidsville and City had no assurances any would stop there in the future.

Case	Tax or Appropriation and Purpose	Decision
Bridges v. City of Charlotte, 221 N.C. 472 (1942)	Tax levy and appropriation by Charlotte for local share of employer payments to teachers' retirement fund.	Upheld; retirement fund found to be for a public purpose because it will improve the standards of teacher service and stabilize teacher employment; benefits to members of retirement system found to be incidental when compared to public benefit in improved education.
Briggs v. City of Raleigh, 195 N.C. 223 (1928)	Tax levy to pay for general obligation bonds issued by city to develop State Fair.	Upheld; a State Fair promotes the general welfare of the people by advancing their education in agricultural and industrial matters and by increasing their appreciation for the arts and sciences and is thus a public purpose; State Fair a municipal purpose because community interests in fair are inseparable from general public interest.

W22-33

SESSION 1985

Appendix IX F

SENATE BILL 851

Short Title: Legislation on Appropriations. (Public)

Sponsors: Senators Rand, Plyler; Ballenger, Barnes, Basnight,*

Referred to: Special Message to House.

July 10, 1985

A BILL TO BE ENTITLED

AN ACT TO RESTRICT SUBSTANTIVE LEGISLATION IN APPROPRIATIONS BILLS.

The General Assembly of North Carolina enacts:

Section 1. The Executive Budget Act, Article 1 of Chapter 143 of the General Statutes, is amended by adding a new section to read:

"§ 143-15.1. Limitation on general appropriations bills.--(a) No provision changing existing law shall be contained in the Current Operations Appropriations Bill or in the Capital Improvement Appropriations Bill, or in any bill generally revising appropriations for the second fiscal year of a biennium which were contained in the Current Operations Appropriations Bill or the Capital Improvement Appropriations Bill.

(b) No amendment to any bill listed in subsection (a) of this bill shall be in order if the language is prohibited by that subsection.

(c) Notwithstanding subsections (a) and (b) of this section, any of the bills listed in subsection (a) of this section or an amendment to such bill may change existing law if the change:

(1) reduces expenditures or alters salaries; or

(2) changes the scope or character of a program which must be reduced, increased, or changed because of an increase or decrease of funds appropriated for the program;

provided, that for a provision to be in order under this subsection, it must be recommended to the General Assembly in a written report adopted by the Appropriations Committee before or at the same time the bill is reported, or if such provision is contained in a floor amendment, the sponsor of the amendment must present to the principal clerk at or before the time the amendment is offered an explanation of the amendment for distribution to each member of that house."

Sec. 2. Section 1 of this act is an adoption in part of Rule XXI, clause 2(b) of the Rules of the U. S. House of Representatives. The Legislative Research Commission shall report to the 1985 General Assembly, Second Session 1986, as to whether the adoption of the modified Holman rule was an effective way to regulate the appropriations process, whether it should remain, be amended, be repealed, or be placed in the North Carolina Constitution.

Sec. 3. This act is effective upon ratification.

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*Additional Sponsors: Cobb, Conder, Ezzell, Goldston, Guy, Hardison, Harrington, Harris, Hipps, Hunt of Durham, Hunt of Moore, Johnson of Cabarrus, Johnson of Wake, Jordan, Kaplan, Kincaid, Martin of Pitt, Martin of Guilford, Marvin, McDuffie, Parnell, Price, Rauch, Redman, Royall, Sawyer, Simpson, Smith,

Soles, Speed, Staton, Swain, Taft, Tally, Thomas of Craven, Thomas of Henderson, Walker, Ward, Warren, Watt, Winner, Woodard, Williams.

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(Please type or use ballpoint pen)

H. B. No. ____________

DATE 7/10/85

S. B. No. 851

Amendment No. 1 (one)
(to be filled in by Principal Clerk)

Rep.)
) MARTIN OF GUILFORD
Sen.)

moves to amend the bill on page 2, line 5

by deleting the semicolon and adding the following:

"; or because of changes in federal law or regulation;"

SIGNED [signature]

44-0
ADOPTED 7/10/85 FAILED ____________ TABLED ____________

[initials]

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PRINCIPAL CLERK'S OFFICE